

AMENDED IN SENATE JUNE 14, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2960

Introduced by Assembly Member Ridley-Thomas

February 24, 2006

An act to amend Section 454.5 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2960, as amended, Ridley-Thomas. Energy: electrical corporation procurement plans.

(1) The existing Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. Among the objectives that a procurement plan is required to accomplish are to moderate the price risk associated with serving its retail customers and to provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the plan.

This bill would require that an additional objective of an electrical corporation's procurement plan is to provide for appropriate incentives to mitigate against price volatility in natural gas supply costs when an electricity supply contract provides for the price of electricity to increase when the price of natural gas used to generate the electricity increases. *The bill would make other changes regarding these procurement plans, as specified, to reduce the state's dependence on electricity generated from natural gas.*

(2) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Natural gas plays a critical role in California's energy
4 market, with generation of electricity accounting for half of the
5 natural gas consumed in the state.

6 (b) Natural gas supplies are dwindling nationally and the gap
7 between demand for, and supplies of, natural gas is widening,
8 causing an increase in price volatility.

9 (c) Because of price escalation clauses in electricity supply
10 contracts, natural gas price volatility affects residential,
11 commercial, and industrial electricity bills and threatens
12 California's economy.

13 ~~(d) While California's programs for promoting energy~~
14 ~~efficiency and expansion of renewable energy resources for the~~
15 ~~generation of electricity are important policies for decreasing the~~
16 ~~state's use of natural gas, additional steps need to be taken to~~
17 ~~mitigate against natural gas price volatility.~~

18 *(d) As presently prescribed, California's current programs*
19 *aimed at increasing procurement of electricity from renewable*
20 *energy resources have not provided the needed incentives to*
21 *mitigate against natural gas price volatility and supply risk.*

22 (e) Wholesale generators, electrical corporations, and gas
23 corporations are the only entities that are in a position to
24 undertake steps to mitigate against natural gas price volatility.

1 and electrical corporations to mitigate against the price volatility
2 and supply risks related to our overdependence on natural gas
3 used to generate electricity by increasing the state's utilization of
4 renewable electricity sources.

5 (f) The Public Utilities Commission should establish
6 appropriate incentives for wholesale generators, ~~electrical~~
7 ~~corporations, and gas corporations to mitigate against the risks of~~
8 ~~price volatility for natural gas used to generate electricity. and~~
9 ~~electrical corporations to mitigate against the price volatility and~~
10 ~~supply risks related to our overdependence on natural gas used~~
11 ~~to generate electricity by increasing the state's utilization of~~
12 ~~renewable electricity sources.~~

13 SEC. 2. Section 454.5 of the Public Utilities Code is amended
14 to read:

15 454.5. (a) The commission shall specify the allocation of
16 electricity, including quantity, characteristics, and duration of
17 electricity delivery, that the Department of Water Resources shall
18 provide under its power purchase agreements to the customers of
19 each electrical corporation, which shall be reflected in the
20 electrical corporation's proposed procurement plan. Each
21 electrical corporation shall file a proposed procurement plan with
22 the commission not later than 60 days after the commission
23 specifies the allocation of electricity. The proposed procurement
24 plan shall specify the date that the electrical corporation intends
25 to resume procurement of electricity for its retail customers,
26 consistent with its obligation to serve. After the commission's
27 adoption of a procurement plan, the commission shall allow not
28 less than 60 days before the electrical corporation resumes
29 procurement pursuant to this section.

30 (b) An electrical corporation's proposed procurement plan
31 shall include, but not be limited to, all of the following:

32 (1) An assessment of the price risk associated with the
33 electrical corporation's portfolio, ~~including any utility-retained~~
34 ~~generation, existing power purchase and exchange contracts, and~~
35 ~~proposed contracts or purchases under which an electrical~~
36 ~~corporation will procure electricity, electricity demand~~
37 ~~reductions, and electricity-related products and the remaining~~
38 ~~open position to be served by spot market transactions. of~~
39 ~~resources to meet the electricity demands of its retail customers.~~
40 *The price risk assessment shall include an evaluation of the*

1 *dependency of each resource upon natural gas resources and*
2 *shall include a natural gas price and supply forecast associated*
3 *with continued reliance on the resource through 2017. The*
4 *portfolio of resources shall include all of the following:*

5 (A) *Utility-retained generation.*

6 (B) *Existing electricity purchase and exchange contracts.*

7 (C) *Proposed contracts or purchases of electricity.*

8 (D) *Any remaining open demand to be procured through spot*
9 *market transactions.*

10 (E) *Electricity-related products.*

11 (F) *Electricity demand reduction measures.*

12 (2) A definition of each electricity product, electricity-related
13 product, and procurement related financial product, including
14 support and justification for the product type and amount to be
15 procured under the plan *including a natural gas price and supply*
16 *forecast associated with electric procurement that is reliant on*
17 *natural gas resources through 2017.*

18 (3) The duration of the plan.

19 (4) The duration, timing, and range of quantities of each
20 product to be procured.

21 (5) A competitive procurement process under which the
22 electrical corporation may request bids for procurement-related
23 services, including the format and criteria of that procurement
24 process.

25 (6) An incentive mechanism, if any incentive mechanism is
26 proposed, including the type of transactions to be covered by that
27 mechanism, their respective procurement benchmarks, and other
28 parameters needed to determine the sharing of risks and benefits.

29 (7) The upfront standards and criteria by which the
30 acceptability and eligibility for rate recovery of a proposed
31 procurement transaction will be known by the electrical
32 corporation prior to execution of the transaction. This shall
33 include an expedited approval process for the commission's
34 review of proposed contracts and subsequent approval or
35 rejection thereof. The electrical corporation shall propose
36 alternative procurement choices in the event a contract is
37 rejected.

38 (8) Procedures for updating the procurement plan.

39 (9) A showing that the procurement plan will achieve the
40 following:

1 (A) The electrical corporation will, in order to fulfill its unmet
2 resource needs and in furtherance of Section 701.3, until a 20
3 percent renewable resources portfolio is achieved, procure
4 renewable energy resources with the goal of ensuring that at least
5 an additional 1 percent per year of the electricity sold by the
6 electrical corporation is generated from renewable energy
7 resources, provided sufficient funds are made available pursuant
8 to Section 399.6, to cover the above-market costs for new
9 renewable energy resources.

10 (B) The electrical corporation will create or maintain a
11 diversified procurement portfolio consisting of both short-term
12 and long-term electricity and electricity-related and demand
13 reductions products *and electricity procured from renewable and*
14 *natural gas resources consistent with the policies and incentives*
15 *described herein.*

16 ~~(C) The electrical corporation will first meet its unmet~~
17 ~~resource needs through all available energy efficiency and~~
18 ~~demand reduction resources that are cost effective, reliable, and~~
19 ~~feasible.~~

20 *(C) Pursuant to the policies of the Energy Action Plan adopted*
21 *in 2003 and subsequently affirmed in the implementation*
22 *strategies outlined in Energy Action Plan II, the electrical*
23 *corporation will first meet its unmet resource needs through all*
24 *available energy efficiency and demand reduction resources that*
25 *are cost effective, reliable, and feasible. All new generation*
26 *needs shall first be met by renewable energy resources and*
27 *distributed generation. Other unmet needs shall be met by clean*
28 *and efficient fossil fuel generation.*

29 (10) The electrical corporation's risk management policy,
30 strategy, and practices, including specific measures of price
31 stability, *that shall account for natural gas price volatility and*
32 *supply risks.*

33 (11) A plan to achieve appropriate increases in diversity of
34 ownership and diversity of fuel supply of nonutility electrical
35 generation.

36 (12) A mechanism for recovery of reasonable administrative
37 costs related to procurement in the generation component of
38 rates.

39 (c) The commission shall review and accept, modify, or reject
40 each electrical corporation's procurement plan. The

1 commission's review shall consider each electrical corporation's
2 individual procurement situation, and shall give strong
3 consideration to that situation in determining which one or more
4 of the features set forth in this subdivision shall apply to that
5 electrical corporation. A procurement plan approved by the
6 commission shall contain one or more of the following features,
7 provided that the commission may not approve a feature or
8 mechanism for an electrical corporation if it finds that the feature
9 or mechanism would impair the restoration of an electrical
10 corporation's creditworthiness or would lead to a deterioration of
11 an electrical corporation's creditworthiness:

12 (1) A competitive procurement process under which the
13 electrical corporation may request bids for procurement-related
14 services. The commission shall specify the format of that
15 procurement process, as well as criteria to ensure that the auction
16 process is open and adequately subscribed. Any purchases made
17 in compliance with the commission-authorized process shall be
18 recovered in the generation component of rates.

19 (2) An incentive mechanism that establishes a procurement
20 benchmark or benchmarks and authorizes the electrical
21 corporation to procure from the market, subject to comparing the
22 electrical corporation's performance to the
23 commission-authorized benchmark or benchmarks. The incentive
24 mechanism shall be clear, achievable, and contain quantifiable
25 objectives and standards. The incentive mechanism shall contain
26 balanced risk and reward incentives that limit the risk and reward
27 of an electrical corporation.

28 (3) Upfront achievable standards and criteria by which the
29 acceptability and eligibility for rate recovery of a proposed
30 procurement transaction will be known by the electrical
31 corporation prior to the execution of the bilateral contract for the
32 transaction. The commission shall provide for expedited review
33 and either approve or reject the individual contracts submitted by
34 the electrical corporation to ensure compliance with its
35 procurement plan. To the extent the commission rejects a
36 proposed contract pursuant to this criteria, the commission shall
37 designate alternative procurement choices obtained in the
38 procurement plan that will be recoverable for ratemaking
39 purposes.

1 (d) A procurement plan approved by the commission shall
2 accomplish each of the following objectives:

3 (1) Enable the electrical corporation to fulfill its obligation to
4 serve its customers at just and reasonable rates.

5 (2) Eliminate the need for after-the-fact reasonableness
6 reviews of an electrical corporation's actions in compliance with
7 an approved procurement plan, including resulting electricity
8 procurement contracts, practices, and related expenses. However,
9 the commission may establish a regulatory process to verify and
10 assure that each contract was administered in accordance with the
11 terms of the contract, and contract disputes which may arise are
12 reasonably resolved.

13 (3) Ensure timely recovery of prospective procurement costs
14 incurred pursuant to an approved procurement plan. The
15 commission shall establish rates based on forecasts of
16 procurement costs adopted by the commission, actual
17 procurement costs incurred, or combination thereof, as
18 determined by the commission. The commission shall establish
19 power procurement balancing accounts to track the differences
20 between recorded revenues and costs incurred pursuant to an
21 approved procurement plan. The commission shall review the
22 power procurement balancing accounts, not less than
23 semiannually, and shall adjust rates or order refunds, as
24 necessary, to promptly amortize a balancing account, according
25 to a schedule determined by the commission. Until January 1,
26 2006, the commission shall ensure that any overcollection or
27 undercollection in the power procurement balancing account
28 does not exceed 5 percent of the electrical corporation's actual
29 recorded generation revenues for the prior calendar year
30 excluding revenues collected for the Department of Water
31 Resources. The commission shall determine the schedule for
32 amortizing the overcollection or undercollection in the balancing
33 account to ensure that the 5 percent threshold is not exceeded.
34 After January 1, 2006, this adjustment shall occur when deemed
35 appropriate by the commission consistent with the objectives of
36 this section.

37 (4) Moderate the price risk associated with serving its retail
38 customers, including the price risk embedded in its long-term
39 supply contracts, by authorizing an electrical corporation to enter
40 into financial and other electricity-related product contracts.

1 (5) Provide for just and reasonable rates, with an appropriate
2 balancing of price stability and price level in the electrical
3 corporation's procurement plan.

4 (6) Provide for appropriate incentives to mitigate against price
5 volatility in natural gas supply costs where the electricity is being
6 generated from the burning of natural gas and the electricity
7 supply contract provides for the price of electricity to increase
8 when natural gas prices increase. *natural gas price volatility and*
9 *supply risks in electric generation and reduce our dependence on*
10 *electricity generated from natural gas resources.*

11 (e) The commission shall provide for the periodic review and
12 prospective modification of an electrical corporation's
13 procurement plan.

14 (f) The commission may engage an independent consultant or
15 advisory service to evaluate risk management and strategy. The
16 reasonable costs of any consultant or advisory service is a
17 reimbursable expense and eligible for funding pursuant to
18 Section 631.

19 (g) The commission shall adopt appropriate procedures to
20 ensure the confidentiality of any market sensitive information
21 submitted in an electrical corporation's proposed procurement
22 plan or resulting from or related to its approved procurement
23 plan, including, but not limited to, proposed or executed power
24 purchase agreements, data request responses, or consultant
25 reports, or any combination, provided that the Office of
26 Ratepayer Advocates and other consumer groups that are
27 nonmarket participants shall be provided access to this
28 information under confidentiality procedures authorized by the
29 commission.

30 (h) Nothing in this section alters, modifies, or amends the
31 commission's oversight of affiliate transactions under its rules
32 and decisions or the commission's existing authority to
33 investigate and penalize an electrical corporation's alleged
34 fraudulent activities, or to disallow costs incurred as a result of
35 gross incompetence, fraud, abuse, or similar grounds. Nothing in
36 this section expands, modifies, or limits the State Energy
37 Resources Conservation and Development Commission's
38 existing authority and responsibilities as set forth in Sections
39 25216, 25216.5, and 25323 of the Public Resources Code.

1 (i) An electrical corporation that serves less than 500,000
2 electric retail customers within the state may file with the
3 commission a request for exemption from this section, which the
4 commission shall grant upon a showing of good cause.

5 (j) (1) Prior to its approval pursuant to Section 851 of any
6 divestiture of generation assets owned by an electrical
7 corporation on or after the date of enactment of the act adding
8 this section, the commission shall determine the impact of the
9 proposed divestiture on the electrical corporation's procurement
10 rates and shall approve a divestiture only to the extent it finds,
11 taking into account the effect of the divestiture on procurement
12 rates, that the divestiture is in the public interest and will result in
13 net ratepayer benefits.

14 (2) Any electrical corporation's procurement necessitated as a
15 result of the divestiture of generation assets on or after the
16 effective date of the act adding this subdivision shall be subject
17 to the mechanisms and procedures set forth in this section only if
18 its actual cost is less than the recent historical cost of the divested
19 generation assets.

20 (3) Notwithstanding paragraph (2), the commission may deem
21 proposed procurement eligible to use the procedures in this
22 section upon its approval of asset divestiture pursuant to Section
23 851.

24 SEC. 3. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the
29 penalty for a crime or infraction, within the meaning of Section
30 17556 of the Government Code, or changes the definition of a
31 crime within the meaning of Section 6 of Article XIII B of the
32 California Constitution.